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Filing date: **01/26/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219751
Party	Defendant Spartan Brands, Inc.
Correspondence Address	Philip Y. Braginsky Tarter Krinsky & Drogin LLP 11th Floor 1350 Broadway New York, NY 10018 docket@tarterkrinsky.com;pbraginsky@tar
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Date	01/26/2015
Attachments	answertooppositionmarketamerica.pdf(513166 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application No. 86/284,907
Trademark: FIX
Filed: May 19, 2014
Published for Opposition: October 14, 2014

MARKET AMERICA, INC.
Opposer,

vs.

Opposition No. 91219751

SPARTAN BRANDS, INC.
Applicant.

ANSWER TO NOTICE OF OPPOSITION

Applicant SPARTAN BRANDS, INC. ("Applicant"), by and through its undersigned counsel, answers the Notice of Opposition as follows:

1. Applicant admits the allegations of Paragraph 1 of the Notice of Opposition.
2. Applicant admits the assertions of paragraph 2 to the extent that the Application is based on Applicant's intent to use the mark applied for in the trademark application assigned Serial No. 86/284907. Applicant denies all other assertions in Paragraph 2 of the Notice of Opposition.
3. Applicant admits the allegations of Paragraph 3 of the Notice of Opposition.
4. The allegations of Paragraph 4 of the Notice of Opposition are conclusions of law to which no response is required. To the extent a response is deemed required, Applicant denies the allegations of Paragraph 4 of the Notice of Opposition.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Notice of Opposition and accordingly denies the same.
6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Notice of Opposition and accordingly denies the same.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Notice of Opposition and accordingly denies the same.
8. The allegations of Paragraph 8 of the Notice of Opposition are conclusions of law to which no response is required. To the extent a response is deemed required, Applicant denies the allegations of Paragraph 8 of the Notice of Opposition.
9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Notice of Opposition and accordingly denies the same.
10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Notice of Opposition and accordingly denies the same.
11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Notice of Opposition and therefore denies the same.
12. Applicant denies the allegations of Paragraph 12 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

13. There is no likelihood of confusion, mistake or deception with respect to Applicant's Mark and the goods set forth in the application and Opposer's registered marks because, *inter alia*, Opposer's application is for FIX; in contrast, Applicant's registrations use the formative FIXX along with other dominant portions.
14. Applicant's use of Applicant's Mark will not mistakenly be thought by the public to derive from the same source as Opposer's goods and services, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization or approval.
15. Applicant's Mark in its entirety is sufficiently, distinctively different from Opposer's Mark to avoid confusion, deception or mistake as to the source or sponsorship or association of Applicant's services.

Accordingly, Applicant prays that the Notice of Opposition be dismissed.

Dated: January 26, 2015

Respectfully submitted,

Tarter Krinsky & Drogin LLP

A handwritten signature in black ink, appearing to read 'P. Braginsky', written over a horizontal line.

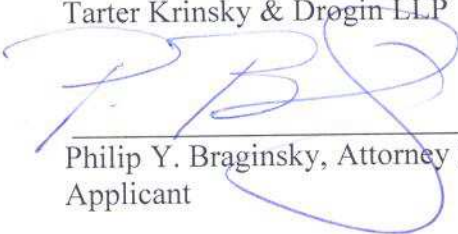
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Certificate of Filing

The undersigned hereby certifies that the foregoing Answer to Notice of Opposition was filed on this 26th day of January, 2015, through electronic means via the ESTTA website.

Tarter Krinsky & Drogin LLP

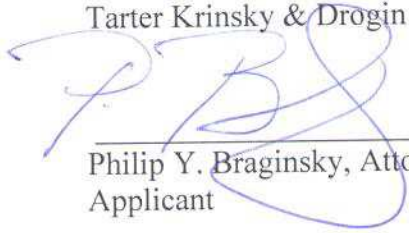


Philip Y. Braginsky, Attorney for
Applicant

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition has been served on Market America, Inc. via its counsel Ryan S. Luft, by mailing said copy on January 26, 2015, via First Class Mail, postage prepaid, to: Ryan S. Luft, 1302 Pleasant Ridge Road, Greensboro, North Carolina 27409.

Tarter Krinsky & Drogin LLP



Philip Y. Braginsky, Attorney for
Applicant